

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER R4-2012-0160 (Proposed)

IN THE MATTER OF
SANTA CLARITA VALLEY SANITATION DISTRICT
OF LOS ANGELES COUNTY
(VALENCIA AND SAUGUS WATER RECLAMATION PLANTS)

This Settlement Agreement and Stipulation for entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board), on behalf of the Los Angeles Water Board Prosecution Team (Prosecution Team), and the Santa Clarita Valley Sanitation District (SCVSD or Discharger) (collectively known as the Parties) and is presented to the Los Angeles Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

RECITALS

1. SCVSD owns and operates the Valencia Water Reclamation Plant (hereinafter Facility or Valencia WRP), a tertiary wastewater treatment plant located at 28185 The Old Road, Valencia, California. The facility has a design capacity of 21.6 million gallons per day (mgd). The facility discharges tertiary-treated wastewater from Discharge Points 001 and 002 to the Santa Clara River, a water of the United States. SCVSD also owns and operates the Saugus Water Reclamation Plant (hereinafter Saugus WRP), a tertiary wastewater treatment plant located at 26200 Springbrook Avenue, Santa Clarita, California. The facility has a design capacity of 6.5 mgd. The facility discharges tertiary-treated wastewater from Discharge Point 001 to the Santa Clara River.
2. On May 6, 2004, the Los Angeles Water Board adopted Resolution No. 04-004, which revised and adopted the Upper Santa Clara River Chloride Total Maximum Daily Load (TMDL). This TMDL was approved by the State Water Resources Control Board (State Water Board) on July 22, 2004; the Office of Administrative Law (OAL) on November 15, 2004; and the United States Environmental Protection Agency (USEPA) on April 28, 2005. It became effective on May 4, 2005.
3. On December 11, 2008, the Los Angeles Water Board adopted Resolution No. R4-2008-012, which adopted site-specific chloride objectives and revised the Upper Santa Clara River Chloride TMDL. This resolution was approved by the

State Water Board on October 20, 2009; the OAL on January 26, 2010; and the USEPA on April 6, 2010. It became effective on April 6, 2010.

4. On June 4, 2009, the Los Angeles Water Board adopted Order No. R4-2009-0074 *Waste Discharge Requirements for the Santa Clarita Valley Sanitation District of Los Angeles County, Valencia Water Reclamation Plant Discharge to the Santa Clara River*. This Order became effective on July 24, 2009, and serves as National Pollutant Discharge Elimination System (NPDES) Permit No. CA0054216. Order No. R4-2009-0074 incorporates the Upper Santa Clara River Chloride TMDL Implementation Plan.
5. On June 4, 2009, the Los Angeles Water Board adopted Order No. R4-2009-0075 *Waste Discharge Requirements for the Santa Clarita Valley Sanitation District of Los Angeles County, Saugus Water Reclamation Plant Discharge to the Santa Clara River*. This Order became effective on July 24, 2009, and serves as National Pollutant Discharge Elimination System (NPDES) Permit No. CA0054313. Order No. R4-2009-0075 incorporates the Upper Santa Clara River Chloride TMDL Implementation Plan.
6. Order No. R4-2009-0074, Provision VI.C.8. (page 41), and Order No. R4-2009-0075, Provision VI.C.8. (page 40), read: "The discharger shall comply with the applicable TMDL-related tasks, and future revisions thereto, in Attachment K of this Order." Task No. 17(a) of Attachment K for both Orders requires that by May 4, 2011, SCVSD complete a Wastewater Facilities Plan and Programmatic Environmental Impact Report (EIR) for facilities to comply with final effluent permit limits for chloride.
7. On May 2, 2011, SCVSD submitted a copy of a Notice of Exemption from the requirement to prepare an EIR or Negative Declaration. This Notice of Exemption did not meet the requirements of Task 17(a) because it did not constitute a programmatic EIR and it addresses actions to meet the conditional wasteload allocations (WLAs), not actions to meet the final effluent limits for chloride.
8. On May 2, 2011, SCVSD submitted a Wastewater Facilities Plan. The Wastewater Facilities Plan was inadequate because it was not a plan for actions to meet the final effluent limits for chloride of 100 mg/L. Additionally, the Wastewater Facilities Plan does not provide the facilities necessary to allow application of conditional WLAs.
9. On May 27, 2011, the Los Angeles Water Board issued a Notice of Violation (NOV) to SCVSD for failure to complete Task 17(a) from Attachment K of Order Nos. R4-2009-0074 and R4-2009-0075. The NOV directed SCVSD to complete Task 17(a) and submit the Wastewater Facilities Plan and Programmatic EIR for facilities to comply with final permit effluent limits for chloride to the Regional

Board. The NOV further directed SCVSD to submit a written response by June 27, 2011 that either: (1) confirms that SCVSD has corrected these violations with a brief description of how SCVSD has corrected them, or (2) identifies when SCVSD will have completed correcting these violations and a brief description of how SCVSD will correct them.

10. On June 27, 2011, SCVSD submitted a response to the NOV stating that SCVSD staff would recommend to its Board of Directors that staff prepare a Wastewater Facilities Plan and EIR for facilities to comply with a final effluent chloride limit of 100 mg/L. The response stated that, assuming the Board approved the staff recommendation, the Wastewater Facilities Plan and EIR would be completed by December 31, 2012.
11. On July 19, 2012, SCVSD submitted a letter to the Los Angeles Water Board with a compliance status update. According to the letter, at its July 26, 2011 meeting, the SCVSD Board of Directors approved their staff's recommendation to prepare a Wastewater Facilities Plan and EIR for facilities to comply with a final effluent chloride limit of 100 mg/L. SCVSD released a Notice of Preparation on January 6, 2012, seeking input on the scope for the Facilities Plan and EIR. According to the July 19, 2012 letter, due to the volume and nature of comments received in response to the Notice of Preparation, SCVSD would not be able to complete the Wastewater Facilities Plan and EIR by December 31, 2012. The letter stated that SCVSD would provide a new projected schedule for the production of the documents at a later date.
12. As of the date of this Order, SCVSD has not complied with Task 17(a) from Attachment K of Order Nos. R4-2009-0074 and R4-2009-0075.

Regulatory Considerations

1. As described in the above Recitals, SCVSD has violated Order Nos. R4-2009-0074 and R4-2009-0075 by failing to comply with Task 17(a) from Attachment K. The Los Angeles Water Board may assess administrative civil liability based on California Water Code Section 13385.
2. Water Code Section 13385(e) states: *"In determining the amount of civil liability imposed under this section, the regional board....shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation."*

3. The Stipulated Order is consistent with both the California Water Code and the Enforcement Policy, as described more fully in Attachment A. The Discharger's economic benefit is recovered in accordance with Water Code section 13385(e).

Settlement

4. On 26 November 2012, the Executive Officer of the Los Angeles Water Board issued Administrative Civil Liability Complaint (ACLC) R4-2012-0160 to the Discharger for \$280,250. The Parties thereafter engaged in settlement negotiations and have agreed to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Los Angeles Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged in the ACLC and that this Stipulated Order is in the best interest of the public.
5. The Parties have agreed to adjust three of the penalty calculation factors, as described in Attachment A to this Order (Potential for Harm; Per Day Factor; History of Violations). The basis for these factors is found in the State Water Resources Control Board's *Water Quality Enforcement Policy*.
6. To resolve the violations alleged in the ACLC by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$225,000 in liability against the Discharger. Consistent with the *Water Quality Enforcement Policy*, up to 50% of that amount can be dedicated toward a Supplemental Environmental Project. Therefore, the Parties have agreed that \$97,500 of the total liability (50%, after subtracting staff costs) will be allocated to a SEP, as described in Attachment B. In addition, the Discharger shall pay a total of \$127,500 to the State Water Resources Control Board's Cleanup and Abatement Account. Of that amount, approximately \$30,000 consists of staff costs and the balance is stipulated penalties.

Stipulations

The Parties stipulate to the following:

1. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling **two hundred twenty five thousand dollars (\$225,000)**. Of this amount:
 - a. **One hundred and twenty-seven thousand five hundred dollars (\$127,500)** shall be paid into the Cleanup and Abatement Account. A single payment shall

be made not later than 30 days after the final execution of the Order. The check should be made payable to the *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. The Discharger shall send the original signed check to Julie Macedo, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812. A copy of the check shall be sent to Jenny Newman, Regional Water Quality Control Board, Los Angeles Region, 320 W. 4th Street, Los Angeles, CA 90013.

- b. The remaining liability of **ninety-seven thousand five hundred dollars (\$97,500)** shall be permanently suspended pending timely completion of the work, and submittal of the reports, described in Attachment B, *Supplemental Environmental Project*. The reports must document completion of the required tasks at a cost of at least \$97,500. If less than \$97,500 is spent on the project, then the Discharger shall submit the difference no later than 1 November 2015.
2. **Agreement of Discharger to Fund, Report, and Guarantee Implementation of SEP:** The Discharger represents that: (1) it will fund the SEP in the amount as described in this Stipulation; (2) it will provide certifications and written reports to the Los Angeles Water Board consistent with the terms of this Stipulation detailing the implementation of the SEP; and (3) will guarantee implementation of the SEP by remaining liable for the entire cost of the SEP until it is completed and accepted by the Los Angeles Water Board in accordance with the terms of this Stipulation. The Discharger agrees that the Los Angeles Water Board has the right to require an audit of the funds expended by it to implement the SEP.
3. **Oversight of SEP:** The Discharger is solely responsible for paying for all oversight costs incurred to oversee the SEP. The SEP oversight costs are in addition to the total administrative civil liability imposed against the Discharger and are not credited toward the Discharger's obligation to fund the SEP.
4. **Anticipated 2013 Submission from SCVSD.** SCVSD, as lead agency, will circulate for public review a draft Facilities Plan and EIR for a project that complies with the TMDL on or about April 30, 2013, consider for approval a final Facilities Plan and EIR on or before October 31, 2013, and thereafter submit to the Los Angeles Water Board, pursuant to Order Nos. R4-2009-0074 and R4-2009-0075, a final Facilities Plan and certified EIR.
5. **SCVSD Settlement Protection.** By resolving the violations brought pursuant to the ACLC, SCVSD will not face additional enforcement for failure to comply with Task 17(a) from Attachment K of Order Nos. R4-2012-0074 and R4-2012-0075 for possible violations that could be brought from November 27, 2012 through April 30, 2013. However, the Los Angeles Water Board reserves all of its other enforcement rights, including but not limited to submission of engineering designs. If SCVSD fails to submit its final Facilities Plan and certified EIR by October 31,

2013, the Los Angeles Water Board may pursue further enforcement for compliance with Task 17(a) and is permitted to calculate any penalties from May 1, 2013, although the Los Angeles Water Board agrees not to commence any enforcement action, for any violations arising from Order Nos. R4-2012-0074 or R4-2012-0075, until on or after November 1, 2013.

6. **Publicity:** Should Discharger or its agents or subcontractors publicize one or more elements of the SEP, they shall state in a prominent manner that the project is being partially funded as part of the settlement of an enforcement action by the Los Angeles Water Board against the Discharger.
7. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.
8. **Party Contacts for Communications related to Stipulated Order:**

For the Regional Water Board:
Jenny Newman
Regional Water Quality Control Board
Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

For the Discharger:
Grace R. Chan
Chief Engineer and General Manager
County Sanitation Districts of Los Angeles County
1955 Workman Mill Road
Whittier, CA 90601
9. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
10. **Matters Addressed by Stipulation:** Upon the Los Angeles Water Board's, or its delegee's, adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations alleged in the ACLC pursuant to Water Code sections 13323, 13350 and 13385. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Stipulation Paragraph 1 herein.

11. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Los Angeles Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Los Angeles Water Board, or its delegee, for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Los Angeles Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
12. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Los Angeles Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
13. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Los Angeles Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Team or Los Angeles Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.
14. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
15. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Los Angeles Water Board.
16. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Los Angeles Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Los Angeles Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Los Angeles Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Los Angeles Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
17. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the findings in the ACLC, this Stipulated Order, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance; however, the Discharger recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.
18. **Waiver of Hearing:** The Discharger has been informed of the rights provided by CWC section 13323(b), and hereby waives its right to a hearing before the Los Angeles Water Board prior to the adoption of the Stipulated Order.
19. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Los Angeles Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
20. **Los Angeles Water Board is Not Liable:** Neither the Los Angeles Water Board members nor the Los Angeles Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.
21. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
22. **No Third Party Beneficiaries.** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
23. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Los Angeles Water Board, or its delegee, enters the Order.

24. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Los Angeles Valley Region

By: Samuel Unger
Samuel Unger
Executive Officer

Date: April 16, 2013

Santa Clarita Valley Sanitation District of Los Angeles County

ATTEST:

Santa Clarita Valley Sanitation District of Los
Angeles County

By: Kimberly S. Compton
Secretary

By: Myke Antonini
Chairperson

Date: March 13, 2013

Approved as to Form

Lewis, Brisbois, Bisgaard, & Smith, LLP

By: Ray J. B.
District Counsel

Order of the Los Angeles Water Board

1. In adopting this Stipulated Order, the Los Angeles Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385(e). The consideration of these factors is based upon information and comments obtained by the Los Angeles Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Los Angeles Water Board or its delegee by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the Los Angeles Water Board for this matter.
2. This is an action to enforce the laws and regulations administered by the Los Angeles Water Board. The Los Angeles Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.
3. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Los Angeles Water Board.

Pursuant to CWC sections 13323, 13350, 13385 and Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, Los Angeles Region.

By: 

Deborah Smith
Chief Deputy Executive Officer

Date: 6-28-13

Attachment A: Penalty Calculation Methodology
Attachment B: Supplemental Environmental Project (SEP)